

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RAYMOND ALLEN WIESNER,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TONYA MICHELLE FOSTER,

Respondent-Appellant,

and

CHRISTOPHER ALLEN WIESNER,

Respondent.

UNPUBLISHED

June 30, 2005

No. 258786

Wayne Circuit Court

Family Division

LC No. 03-418560

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. FACTS

Raymond Wiesner, aged approximately four months, was placed with his maternal grandfather after the Westland Police Department alleged that respondent had abandoned the infant.

In September 2003, the trial court found that Raymond came within the provisions of the juvenile code because he was born with cocaine in his system. Further, respondent used cocaine throughout her pregnancy, received limited prenatal care during the pregnancy, and neglected to care for the baby before he was removed. However, the court determined the statutory grounds for termination had not been met by clear and convincing evidence and made Raymond a temporary ward of the court. The court outlined a treatment plan for respondent and again placed Raymond with his maternal grandfather.

Respondent failed to attend any court hearings except for the initial bench trial and termination hearing. The foster care worker testified that respondent never attended substance abuse assessment, she did not participate in the treatment program, she never submitted to any drug screens, and was inconsistent with her visitation of Raymond. Respondent testified at the hearing that she was living with her mother for the past six months and was currently employed. Further, respondent testified that she had been convicted of possession of drug paraphernalia and was sentenced to one year probation on September 21, 2004. Since then, she participated in drugs screens for forty-five days. Respondent admitted she had used cocaine for the past two or three years, but had been sober for three months.

II. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours Minors*, 459 Mich 624; 593 NW2d 520, reh den 460 Mich 1205 (1999); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision is reviewed for clear error. *Id.* at 356-357. A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours, supra*, 459 Mich at 633. In applying the clearly erroneous standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III. ANALYSIS

A. Termination of Parental Rights

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) and (g) were established by clear and convincing evidence. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The child was born with cocaine in his system and was removed from respondent-appellant when he was approximately four months old. Respondent-appellant was absent from all but two court hearings and only sporadically visited her child. Respondent-appellant did not complete substance abuse treatment and did not participate in random drug screens through the foster care worker. She admittedly continued to use cocaine as recently as three months before the termination hearing and was convicted for possession of drug paraphernalia while the child was a temporary court ward. Respondent-appellant did participate in some drug screens through the court that convicted her of the drug paraphernalia charge and had been employed for approximately one month at the time of the termination hearing. However, the trial court did not clearly err in finding that two of the statutory grounds were established. Once the petitioner establishes at least one statutory ground for termination, the family court must terminate the parental rights unless the court finds, on the whole record, that termination is clearly not in the child's best interests. MCL 712A.19b(5).

B. Best Interests of the Child

The evidence did not show that termination of respondent-appellant's parental rights was clearly not in the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Accordingly, the trial court did not err in terminating her parental rights to the minor child.

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello